

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KARL LOUIS AMMANN,)	CASE NO. C07-1392-MJP-MAT
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
STEVE THOMPSON,)	
)	
Respondent.)	
_____)	

INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Karl Ammann is currently incarcerated at the Snohomish County Jail in Everett, Washington where he is serving a sentence imposed by the Snohomish County Superior Court following his May 2007 conviction on charges of stalking, violating a protective order, and violating an anti-harassment order. He has filed a petition for federal habeas relief under 28 U.S.C. § 2254. Petitioner, by way of the instant petition, appears to be challenging the validity of his conviction as well as certain conditions of his current confinement. The petition has not been ordered served on respondent. For the reasons set forth below, this Court recommends that petitioner's petition, and this action, be dismissed without prejudice.

01 DISCUSSION

02 Exhaustion of State Remedies

03 State remedies must first be exhausted on all issues raised in a federal habeas corpus
04 petition. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b), (c). The exhaustion
05 requirement is not deemed satisfied until petitioner demonstrates that each of his federal claims
06 has been presented to the state's highest court or that no state remedy is available. *Batchelor v.*
07 *Cupp*, 693 F.2d 859, 863 (9th Cir. 1982). The exhaustion requirement is a matter of comity,
08 intended to afford the state courts "the first opportunity to remedy a constitutional violation."
09 *Sweet v. Cupp*, 640 F.2d 233, 236 (9th Cir. 1981).

10 To the extent petitioner's claims seeks to challenge the validity of his conviction, he is
11 required to exhaust those claims in the state courts. Petitioner acknowledges in his petition that
12 his direct appeal of his conviction is currently pending in the Washington Court of Appeals. He
13 suggests in his petition that some of his claims fall outside the scope of what he is permitted to
14 raise on direct appeal, and that the appeal process could take as long to complete as the sentence
15 which was imposed for the conviction he seeks to challenge.

16 It appears that the claims presented by petitioner which call into question the validity of
17 his conviction are claims which are eligible for review in the state courts either through direct
18 appeal or through collateral attack. That the state court review process, by its very nature, takes
19 some time to complete, is not sufficient justification to excuse the exhaustion requirement.
20 Petitioner makes no showing that there has been any undue delay in the appeals process thus far.
21 Accordingly, petitioner's claims, to the extent they challenge the validity of his conviction, are not
22 eligible for federal habeas review at the present time.

01 Conditions of Confinement Claims

02 To the extent petitioner seeks to challenge the conditions of his confinement in the
03 Snohomish County Jail, such as the adequacy of the medical care he has received there,
04 petitioner's claims must be brought in a civil rights action under 42 U.S.C. § 1983 and not in a
05 federal habeas action under § 2254.

06 CONCLUSION

07 For the foregoing reasons, this Court recommends that petitioner's federal habeas petition
08 be dismissed without prejudice. A proposed order accompanies this Report and Recommendation.

09 DATED this 27th day of September, 2007.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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